

UKLA Procedural Note

The UKLA decision making and review process

Ref: UKLA / PN / 908.1

Overview of UKLA decision making and review process¹

There is an internal process of escalation which will be followed by the UKLA prior to providing individual guidance under the Part VI rules of FSMA. However, any issue will be escalated at the discretion of the UKLA, to be determined on a case-by-case basis. The view reached following the internal escalation process is relayed to the advisor. Should a person disagree with the individual guidance given at this stage, they can request that the guidance be reviewed by senior FCA staff as discussed below.

For the purposes of these guidelines, at the UKLA's discretion, a review by senior FCA staff can be carried out by a Managers Meeting and/or the Markets Division Regulatory Committee (Reg Co).

Generally speaking, the process for providing decisions on individual guidance and requesting reviews of individual guidance will be as follows:

- a) An initial discussion will take place between the adviser and the associate who is the primary contact on the transaction (i.e. the first reader). It is often the case that document reviews or queries will be dealt with by two associates within the UKLA and therefore both readers will consider the issue prior to this initial discussion.
- b) If necessary, the matter will be discussed between the associate(s) and the transaction manager either prior to or following this initial discussion.
- c) Individual guidance may be provided at either stage a) or b) as described above.
- d) If necessary following these steps, the matter will be discussed at a managers' meeting, either at the instigation of the UKLA or following a request for review under SUP 9.5.1 G, as discussed below.
- e) The composition of a managers' meeting will depend on the facts and issues of a particular case but may comprise the Head of UKLA, UKLA managers and technical specialists, Primary Markets Policy, General Counsel's Division (GCD), Primary Market Monitoring and Investigations and Enquiries (as appropriate). The associate/manager will prepare a written submission setting out details of the case. The decision taken at the managers' meeting will be relayed to the advisor. A managers' meeting, however constituted by the UKLA, can be construed as a review by senior FCA staff for the purposes of SUP 9.5.1-3, as discussed below.

¹ These guidelines do not contain details of decision making where we issue statutory notices (see DEPP 2 to DEPP 4) or of circumstances where there are referrals of UKLA decisions to the Upper Tribunal (see FSMA Part IX and rules and guidance governing the Upper Tribunal (Upper Tribunal Rules)).

- f) If deemed necessary and appropriate following a managers' meeting, the UKLA may grant leave for the matter to be reviewed by Reg Co or may decide that the matter should be considered by Reg Co before providing individual guidance. Reg Co is a divisional committee comprising the Director of Markets, the Head of UKLA and the other Markets Division Heads of Department. A member of GCD will generally be present. There is no automatic right of review or appeal to Reg Co. However, if a matter is considered at Reg Co, this can also constitute a review by senior FCA staff for the purposes of SUP 9.5.1-3G, as discussed below.
- g) If a person does not agree with the individual guidance provided by the UKLA following a meeting of senior FCA staff and the adviser still wishes to challenge the decision, they may request that the individual guidance be reviewed by the Listing Advisory Review Committee (LARC).

Requesting a review of individual guidance

The process for requesting a review of individual guidance is outlined under SUP 9.5.1-3G within the Handbook (reproduced below). A request for a review of individual guidance can be made following either step a) or b) above. A decision which has been taken at Managers Meeting or Reg Co level has been reviewed by senior FCA staff for the purposes of these guidelines and for the purposes of SUP 9.5.1-3G.

SUP 9.5.1G Where a person that is subject to any requirement of the Part 6 rules disagrees with the individual guidance given by the FCA, he or she can request that the guidance be reviewed at a meeting of senior FCA staff.

SUP 9.5.2G Upon receiving a request under SUP 9.5.1 G senior FCA staff will review:

- (1) the initial request for guidance;
- (2) the individual circumstances of the person seeking the review; and
- (3) the reasons why the person does not agree with the individual guidance.

SUP 9.5.3G The outcome of the senior FCA staff meeting will be communicated to the person.

Listing Advisory Review Committee (LARC)

A person who does not agree with a decision made by senior FCA staff as described above, or a third party that is directly affected by individual guidance, may request that the guidance be reviewed by LARC. LARC is made up of the following:

- a) an FCA Managing Director as Chairman;
- b) a director from the FCA Markets Division*;
- c) a representative from GCD; and
- d) two external independent practitioners with suitable listings experience (usually selected from members of the Listing Authority Advisory Committee (LAAC)).

*Note: a director with conflicts of interest in the dispute (such as those materially involved in the decision or preparing the case) will usually be disqualified from participating in LARC.

The relevant process under SUP 9.5.4-9.5.7 within the Handbook is as follows:

SUP 9.5.4 – A person that does not agree with the individual guidance that results from a senior FCA staff meeting, or a third party that is directly affected by that individual guidance may request that the guidance be reviewed by the Listing Authority Review Committee.

SUP 9.5.5 – The Listing Authority Review Committee has powers, delegated by the FCA Board, to resolve disputes on the application and interpretation of the requirements set out in LR, DTR and PR. A managing director of the FCA sits as chairman of the Listing Authority Review Committee.

SUP 9.5.6 – The person requesting the review can make representations to the Listing Authority Review Committee either orally or in writing.

SUP 9.5.7 – All decisions of the Listing Authority Review Committee are final and are determinative of the FCA's opinion as to the interpretation or application of the requirement in question.

Process for application to appeal to LARC

An applicant may request that the view of UKLA reached following a meeting of senior FCA staff is reconsidered by LARC. LARC will invite both parties to attend its meeting to present their arguments.

The UKLA will advise the applicant of the process and notify the FCA Corporate Services office.

Thereafter, all communications relating to the appeal should be made through the FCA Corporate Services office.

FCA Corporate Services will carry out all administrative functions and act as the Secretary to LARC. Any notices, notifications and other documents required to be submitted to LARC must be served on the Secretary who will ensure that copies are provided to the other parties and the members of LARC as appropriate.

The applicant will be required to advise in writing that they wish their case to be referred to LARC. This should be sent to FCA Corporate Services.

Statements of each party's case should be made in writing setting out the relevant decision, the name of the person who made it, the grounds of the application/basis of its case and the principal matters relied upon, along with copies of any supporting documentation.

LARC will consider procedural matters after receipt of the statements and determine whether further information is required. LARC will also decide the date of the appeal.

Timing of an appeal to LARC is subject to the time it takes both parties to prepare their cases and the availability of the members of LARC. LARC will usually aim to hear an appeal within 10 business days of a request, although this is subject to: a) both parties preparing their cases and related documents so they are provided to FCA Corporate Services 72 hours before the appeal (to allow circulation for review by LARC members); and b) the availability of members of LARC and representatives from both parties to attend such a meeting.